

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 11 APR 2006

WIPO

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Applicant's or agent's file reference NO 7706/WO/PCT	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2005/002693	International filing date (day/month/year) 14.03.2005	Priority date (day/month/year) 19.03.2004	
International Patent Classification (IPC) or national classification and IPC INV. A23C9/13 A23C9/133 A23L1/30 A23L1/305 A23K1/00 A23L2/02 A23L2/39			
Applicant NESTEC S.A. et al			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p style="margin-left: 20px;">a. <input type="checkbox"/> sent to the applicant and to the International Bureau) a total of sheets, as follows:</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="margin-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p style="margin-left: 20px;">b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input checked="" type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand  17.10.2005		Date of completion of this report  12.04.2006	
Name and mailing address of the international preliminary examining authority:   <div style="margin-left: 20px;"> European Patent Office - P.B. 5818 Patentlaan 2  NL-2280 HV Rijswijk - Pays Bas  Tel. +31 70 340 - 2040 Tx: 31 651 epo nl  Fax: +31 70 340 - 3016 </div>		Authorized officer  Inceisa, L  Telephone No. +31 70 340-	



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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

**Description, Pages**

1-15 as originally filed

**Claims, Numbers**

1-19 as originally filed

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. IV Lack of unity of invention**

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1. ☒ In response to the invitation to restrict or pay additional fees, the applicant has:
- ☐ restricted the claims.
  - ☒ paid additional fees.
  - ☐ paid additional fees under protest.
  - ☐ neither restricted nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
  - ☐ not complied with for the following reasons:
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☒ all parts.
  - ☐ the parts relating to claims Nos. .

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-19
Inventive step (IS)	Yes: Claims	
	No: Claims	1-19
Industrial applicability (IA)	Yes: Claims	1-19
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

**Re Item V**

**Reasoned statement with regard to novelty, inventive step or industrial applicability;  
citations and explanations supporting such statement**

Reference is made to the following documents:

- D1: US-A-2003/0235559
- D2: CN-A-1446489 (abstract from WPI)
- D3: CN-C-1052616 (abstract from WPI)
- D4: CN-A-1282539 (abstract from WPI)

**1. ARTICLE 33(2) PCT (NOVELTY)**

The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of claims 1-19 is not new in the sense of Article 54(1) and (2) EPC:

1.1 Document D1 discloses a liquid or powdered food composition which is prepared by the following steps (see cited passages in the search report):

- providing a food product of plant nature (fruits, vegetables, berries and/or herbs)
- providing a liquid (preferably whey and/or milk)
- mixing the food product with the liquid
- separating the liquid (e.g. by filtering or with a centrifuge)

The composition provides a broad spectrum of therapeutic application (e.g. boosting the immune system (p.3 [0034]), treating cancer (p.6 [0073]), treating cardiovascular diseases (p.6 [0074]), improving skin condition (p.3 [0033]).

The composition can also be used in cosmetics to improve the skin condition (see cited passages in the search report).

The subject-matter of claims 1-16, 18 & 19 is therefore not new over D1.

1.2 Document D2 discloses an instant refined wolfberry fruit powder prepared from wolfberry fruit, milk, vegetable butter powder through screening, washing, immersing,

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extracting, solid-liquid separation, squeezing the solid to obtain a juice, deposition, filtering, proportionally mixing and drying.

The composition has an improved bioavailability.

The subject-matter of claims 1-4, 7-15 is therefore not new.

1.3 Document D3 discloses a health ice cream comprising granular sugar, milk powder, vegetable oil, cassia seed, tea and water as raw material. The cassia seed and tea are firstly boiled, then filtered, then the liquid of cassia seed and tea are mixed uniformly with granular sugar, milk powder, vegetable oil and water, through the processes of sterilizing, homogenizing, cooling, ageing, freezing, bottling, hardening and packing. The composition is useful for treating coronary arteriosclerotic heart diseases and clearing eyes.

The subject-matter of claims 1-4, 7, 9-14, 17 & 19 is therefore not new.

1.4 Document D4 discloses a health care beverage comprising walnut kernel juice, non-sugar milk powder, sweetening agent and water through mixing raw materials, immersing, grinding, filtering and sterilizing.

The composition has a curative effect on diabetes.

The subject-matter of claims 1-4, 7-14 & 19 is not new over D4.